

The opinion in support of the decision being entered today is
not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREAS ULLI

Appeal 2007-2042
Application 09/926,694
Technology Center 1700

Decided: August 28, 2007

Before PETER F. KRATZ, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 8-10, 13, and 14.¹ We have jurisdiction under 35 U.S.C. § 6(b).

¹ Claims 11 and 12, the only other claims pending in the Application, have been withdrawn from consideration by the Examiner and, therefore, are not subject to appeal.

We REVERSE.

I. BACKGROUND

The invention relates to an air-permeable, water impermeable structure, and a three-layer sheet incorporating the air-permeable, water impermeable structure. Claims 8 and 10 are illustrative of the subject matter on appeal:

8. An air-permeable, water impermeable structure comprising

an air-permeable water impermeable substrate having a first surface and a second surface opposite the first surface,

a first adhesive surface coating deposited in a discontinuous pattern on the first surface of the substrate and

a second adhesive surface coating deposited in a discontinuous pattern on the second surface of the substrate wherein

the discontinuous adhesive surface coating pattern of the first surface of the substrate is at least partially aligned with the discontinuous adhesive surface coating pattern of the second surface, so that the substrate has areas which are coated on both surfaces and areas which are uncoated on both surfaces.

10. A sheet formation containing

an air permeable, water impermeable substrate having a first surface and a second surface opposite the first surface,

a first sheet of a material laminated to the first surface of the substrate by a first adhesive coating on the first surface of the substrate, and

a second sheet of a material laminated to the second surface of the substrate by a second adhesive coating on said second surface of the substrate,

wherein both the first and second adhesive surface coatings are deposited in discontinuous patterns on both the first and second surfaces of the substrate, and

the adhesive surface coating pattern of the first surface of the substrate is at least partially aligned with the adhesive surface coating pattern of the second surface of the substrate, so that the substrate has areas which are coated on both the first and second surfaces and areas which are uncoated on both the first and second surfaces.

The Examiner relies on the following prior art references to show unpatentability:

| | | |
|----------|--------------|---------------|
| Groshens | US 5,827,579 | Oct. 27, 1998 |
|----------|--------------|---------------|

Appellant's admission in the second paragraph of page 1 of the Specification.

The Examiner rejects the claims 8-10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Appellant's Admission in view of Groshens.

II. DISCUSSION

The issue on appeal arising from the contentions of the Appellant and the Examiner is: Does a preponderance of the evidence show that each and every limitation of the claims is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art?

We answer this question in the negative.

The examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In order to establish a prima facie case of obviousness, the examiner must show that each and every limitation of the claim is described

or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336, *quoted with approval in KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

The Examiner relies upon the following paragraph in the Specification as articulating what was known in the art at the time of the invention:

For manufacturing multi-layered sheet formations it is known on a substrate to deposit a point-like surface coating of an adhesive. Subsequently the substrate is laminated with another foil. The foil is via the adhesive points connected to the substrate. Such sheet formations are for example applied as breathing-active textiles for clothing.

(Specification 1:8-13).

The Examiner acknowledges that the above portion of the Specification describes depositing the adhesive points or dots only on one side of the substrate (Answer 3). Without relying on any evidence, the Examiner states a belief that “it is clearly within the skill of the art to coat the opposing opposite surface with a second pattern of adhesive dots” and a belief that “the subsequent lamination of such a particular double sided adhesive coated fabric to a sheet of a suitable material on each of the article’s outer surfaces is also either clearly known or well within the ordinary skill of the art.” (Answer 3-4.) The Examiner further relies upon

Groshens as disclosing “the concept of coating a suitable fabric or other chosen layer on both opposing outer surfaces with a suitable adhesive dot pattern on each outer surface.” (Answer 4).

The evidence does not support the findings of the Examiner.

First, the evidence does not support the finding that Groshens discloses the concept of applying adhesive to both sides of a substrate. Groshens is directed to an interlining intended to be bonded to another textile sheet (col. 1, ll. 13-14). Groshens, like the prior art of Appellant’s Admission, describes applying adhesive dots (first layer 5) to one side of a substrate (base fabric 2) (col. 3, ll. 30-33). In order to address a problem with the adhesive traversing the base fabric and producing “returns” (col. 1, ll. 39-56), Groshens applies a second layer 7 that “acts as a barrier or a shield with respect to the first layer 5, i.e., it keeps the return phenomenon . . . from taking place.” (Col. 3, ll. 41-44). The secondary layer 7 is not adhesive in nature. Therefore, Groshens describes applying adhesive to only one side, not both sides of the base fabric. Moreover, what Groshens creates is a fusible interlining intended to be bonded on one side only, not both sides.

Second, the “belief” advanced by the Examiner is conclusory in nature. There is no convincing articulated reasoning with a rational underpinning to support the Examiner’s position.

Nor is there any evidence of a suggestion within the prior art for applying adhesive on the alternate side and laminating to a second layer. Groshens and the Admission relied upon by the Examiner are both directed to a one-sided adhesive structure and one-sided laminate.

III. CONCLUSION

We determine that the Examiner has not established by a preponderance of the evidence that each and every limitation of the claims is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art

IV. DECISION

The decision of the Examiner is reversed.

REVERSED

tf/ls

Shoemaker and Mattare, Ltd.
10 Post Office Road – Suite 110
Silver Spring, MD 20910